IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3688 of 2001
with
CIVIL APPLICATION NO. 9279 OF 2001 &
CIVIL APPLICATION NO.6493 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

PUSHPABEN WD/O.RAMPAL ADIWAL

Appearance:
MR PV NANAVATI and MR VIBHUTI NANAVATI for
for appellant/applicant
MR PN BAVISHI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-6

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/10/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

The appellant - United India Assurance Co. Ltd. has filed this appeal under Section 173 read with Sections 163-A and 166 of the Motor Vehicles Act, 1988 ('the Act' for short), against the judgment and award passed by the Motor Accident Claims Tribunal, Kachchh, at Gandhidham, below application Exh.6, dated 5th January 2003 in M.A.C.P. No. 134 of 2000. It may be stated that respondents Nos.1 to 4 - claimants filed the said application under Section 163-A of the Act claiming compensation of Rs.7,59,116/-. The Tribunal, after considering the material on record, partly allowed the said application and directed opponent No.2 (owner of the offending vehicle) and opponent No.3 (present appellant) to pay Rs.3,32,840/- with running interest at the rate of 12% per annum from the date of the application i.e. 7.4.2000 till realisation.

2. The appellant has challenged the said judgment and award on various grounds. However, it is not necessary for us to refer to the same in view of the decision rendered by the Apex Court in the case of Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala and ors., reported in 2001 (3) GLR 2156. In the said decision, the Apex Court, after considering the provisions of Sections 163-A and 166 of the Act, has observed that as under:

"The purpose of this Section and the Second Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that 'the expanding notions of social security and social justice envisage that liability to pay compensation must be "no-fault-liability" and as observed by this Court in Ramanbhai's case (supra), "in order to meet to some extent the

> responsibility of the society to the deaths and injuries caused in road accidents." However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no-fault-liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on an pre-determined formula, which is known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a fast moving society. Further, the law before insertion of Sec.163-A was giving limited benefit to the extent provided under Sec.140 for no fault liability and determination of compensation amount on fault liability was taking long time. That mischief is sought to be remedied by introducing Sec.163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation on fault liability is kept alive, it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

3. At the time of hearing of this appeal, learned Counsel Mr.Bavishi appearing for the claimants submits that the they have withdrawn the application filed under Section 166 of the Act and have opted to accept the award passed under Section 163-A of the Act, as full and final settlement. He has placed on record copy of the communication received by him from the local Advocate, with the thumb impression of respondent No.1 and signatures of respondents Nos.3 and 4. In this view of the matter, it is not necessary for us to decide the appeal filed by the Insurance Company, as in our opinion, the same has become infructuous.

However, we would like to modify the award passed by the Tribunal as far as the interest part is concerned. The Tribunal, in the instant case, has allowed the application filed under Section 163-A and has awarded interest at the rate of 12% per annum from the date of the application till realisation. The Apex Court in the case of S.Kaushnuma Begum and ors. v. New India Assurance Co. Ltd., reported in AIR 2001 SC 485, has awarded interest at the rate of 9%. We, therefore, allow interest at the rate of 9% on the compensation awarded by the Tribunal, from the date of the application till realisation, instead of 12% as awarded by the Tribunal.

The appeal is partly allowed to the aforesaid extent only. The Tribunal shall disburse the amount of compensation to the claimants by Account Payee Cheques, after proper verification.

4. In view of the order passed in the mail appeal, no orders are required to be passed in the Civil Applications and they stand disposed of accordingly.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)
Sreeram.